

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division/Planning Branch  
Honolulu, Hawaii

File No: OA-3017B

180-Day Exp. Date: July 14, 2001

July 13, 2001

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**Regarding:** Conservation District Use Application for  
the Proposed Kaneohe Piers Amnesty Program

**Applicant:** Land Division, Department of Land and  
Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

**Landowner:** Applicant

**Location:** Kaneohe Bay, Nuupia Pond to Waikane, Oahu

**Abutting TMKs:** Various parcels within: (plats)  
(1) 4-4-07,14,16,18,21,22,37;  
4-5-01,06,07,47,58,104;  
4-6-01,03,22,23;  
4-7-09,10,14,17,19,24,30,41;  
4-8-05; and 4-9-01,03

**Area of Project/** Approximately 11,000 acres

**Use:** Approximately one acre of submerged land

**Subzone:** Resource Subzone

**Project Background:**

In May 1998, the Board of Land and Natural Resources approved a plan to address the problem of unauthorized piers in Kaneohe Bay, island of Oahu. Many shorefront property owners who have ocean-related recreational interest such as boating, swimming, and fishing have constructed piers. Most of these piers lack proper authorization from the State and are therefore considered to be illegal. The problem has persisted for several decades without direct action by the State. Lack of staff resources has made the enforcement of the all of the State's established land use laws difficult.

The goal of this program is to provide owners of unauthorized piers with the required permits to achieve compliance with the State's land use laws and ultimately resolve the illegal pier problem in Kaneohe Bay.

In order to help facilitate a solution to this problem, the Governor, on June 20, 2000, signed the legislature's Act 261, which amended Chapter 171 Hawaii Revised Statutes as follows: "Private residential noncommercial piers. Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential noncommercial piers on such terms and conditions as may be prescribed by the board."

To induce participation in the program from owners of these unauthorized piers, an "Amnesty Program" was created which essentially pardons individuals possessing an unauthorized pier. No fines will be imposed on pier owners coming forward to legalize their pier. [Note: This program does not include encroachments other than unauthorized piers, such as seawalls, fill, boats ramps, steps, etc. The State will continue to deal with these encroachments on a case-by-case basis.]

It is not the intent of the Department to pardon "any" action that results in a violation of the State's land use laws. In this case, however, the Department decided that the pier problem was so extensive in Kaneohe Bay that it required a completely different solution than the conventional case-by-case approach to enforcement problems. The Department offered amnesty to

unauthorized pier owners who were willing to participate and offered to prepare the necessary permits and environmental documents, in order to increase the likelihood of participation. Another factor considered by the Department was the environment in Kaneohe Bay, which is ideally suited for pier development. Marine and coastal conditions provide an ideal situation for pier development. The long barrier reef, which stretches from Kaneohe Marine Air Force Base northward along the windward coast, provides shelter and calm seas, which are necessary conditions to maintain structures of these types. As such, from an environmental perspective, the Department feels that pier development is not inconsistent with conservation objectives.

The purpose of this program is to identify cooperative individuals with unauthorized piers in Kaneohe Bay and then group them into one Master Conservation District Use Application (past practice for Kaneohe Bay has been to grant after-the-fact approvals on a case-by-case basis). It is the goal of the Department to provide a global solution to the pier dilemma in Kaneohe Bay for the reasons cited above. This is a complex matter due to the fact that there are both authorized and unauthorized piers in the Bay. In addition, there are individuals with unauthorized piers that have not yet come forward to participate in the process and several who have chosen not to participate. Nevertheless, the Department is willing to grant amnesty to those who are willing to work with the Department in bringing their piers into conformance by also agreeing to a land disposition. Those individuals who do not participate in the program will lose their piers.

Generally, if a property owner accepts a lease for a pier, this sets the terms of public liability insurance and rent for the use of the submerged land. As part of the comprehensive public liability insurance policy, an individual agrees to indemnify the State from and against all claims and demands for damages. The pier owner is then responsible for the maintenance of the pier structure and the State land on which it sits. The process ends with the collection of rents by the Department's fiscal office.

For the purposes of this project, a pier is defined as any structure built within the Conservation District on State Submerged Land. (The Conservation District was established on

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September 18, 1964. Piers built before this date would be considered legal nonconforming (grandfathered). These piers only require a lease agreement with the State. Piers built after this date requires both a CDUA and Lease.

Under the original action plan approved by the Board in 1998 for the Amnesty Program, a pier's status would be determined according to the date it was constructed and the kind of approval held by the landowner. All piers would then be placed into one of three categories: legal, nonconforming, or unauthorized.

A **legal** pier is a pier built after September 18, 1964. For a pier to be considered a **legal** pier, the property owner would be required to possess a Revocable Permit and a Conservation District Use Application. A **nonconforming** pier is a pier built prior to September 18, 1964 for which the property owner has a Revocable Permit. An **unauthorized** pier is a pier built either before or after September 18, 1964 and has one permit but not the other, or no permits from any government authority. In all cases, supporting documentation is required to make a determination on the pier's legal status.

A 1992 photographic index of Oahu's shoreline compiled by the City and County of Honolulu was utilized to develop an inventory of more than 200 shoreline structures, including piers, docks, rocks, and ramps in Kaneohe Bay.

The project area includes the shoreline properties from south of Nuupia Pond (adjacent to the Kaneohe Marine Corps Base - Hawaii) and extends to Waikane, Oahu (**Exhibits 1-2**).

Letters were sent to all known pier owners in the study area to ascertain and/or confirm the pier owner's willingness to participate in the program and to glean any additional information to help the Department categorize its cases (229 letters were sent with 144 replies, of which 134 wished to join the program, 5 said they would remove their pier, and 2 said their pier was not on State land) (**Exhibit 3**).

For those individuals that choose not to participate in the Amnesty Program, the Department will pursue a long-term program to remove the piers. Due to the cost of removal, the Department

will investigate ways to recoup demolition expenses from the abutting landowners who refused to participate in the program. If an abutting landowner decides that they will remove the pier, they should notify the Department of their intentions and coordinate demolition with the State to ensure that natural resources are protected and the site is cleared of all debris. This might involve a follow-up site inspection by Land Division staff to also verify that the pier was removed.

In addition, this program does not include encroachments, other than unauthorized piers, such as seawalls, fill, boats ramps, steps, etc. The Department will continue to deal with these encroachments on a case-by-case basis. These cases are likely to include the imposition of a fine to resolve the encroachment. However, if a pier owner who has other encroachments wishes to include their pier in the Master CDUA, they may do so by notifying the Department. They will be included in the Pier Amnesty Program and issued a lease for the pier after the encroachment issues are resolved.

In addition to issues relating to permitting, the Department of Land and Natural Resources has developed an equitable lease rent for pier owners in Kaneohe Bay. Through this process, the Department will have accomplished its objective for the resolution of illegal piers in Kaneohe Bay. Owners of permitted piers will be able to make improvements to their piers and residence subject to other requirements related to shoreline certifications and County building code.

Those landowners who wish to construct a new pier will be required to apply for a Conservation District Use Permit. Both the Master CDUA and the Environmental Assessment used for this amnesty program will be available as a part of the Public Record and may be used to help landowners facilitate their application.

**Description of Area/Current Use:**

Kaneohe Bay is the northernmost barrier reef in the world and the only barrier reef in the Hawaiian Islands, extending across the mouth of the Bay to include the northwest Mokolii Passage and the southeast Kaneohe Passage, also referred to as the Sampan Channel.

The surface area of Kaneohe Bay at mean sea level is approximately 11,000 acres, or about 8.0 miles long by 2.6 miles wide. There are five major islands in the Bay, Moku o Loe (Coconut Island), Mokoli'i (Chinaman's Hat), Kapapa, Ahu o Laka, and Kekepa (Turtle Back Rock).

Kaneohe Bay has three inshore to offshore zones: a fringing reef zone, a lagoon zone, and a barrier reef complex and three types of reef: fringing reefs, patch reefs, and a barrier reef. Fringing reefs are found in the inshore zone around the shoreline except in areas where freshwater streams enter the Bay or where dredging activities have modified them. Patch reefs are found in the lagoon zone with most of them concentrated near the two channels that bisect the barrier reef. These reefs are round to irregular in shape where coral grows off the inner floor of the Bay and reaches up near the surface.

Most of the recreational activity centers around the central barrier reef flat that extends across the mouth of the Bay and includes the channels at the southern and northern ends, the sand flat and Kapapa Island. The shallow portion of the barrier reef is approximately 3 miles long by 1.2 miles wide.

From 1939 to 1945, the U.S. Navy dredged Mokoli'i Channel to approximately 10 meters. From 1939 to 1940, the U.S. Navy also dredged a ship channel that extends the length of the Bay and connects the Kaneohe Marine Corps Base - Hawaii with the Mokoli'i Channel to provide deep draft ship access between the Bay and the open ocean.

The immediate shoreline area in the vicinity of the piers in Kaneohe Bay is generally composed of mudflats, with some thin terrigenous-based beach areas, generally inaccessible by foot to the general public. Water quality is often impaired due to turbidity from sediments. Because of the generally flat broad terrain, the shoreline areas are either completely submerged at high tide, or dry.

The shoreline of Kaneohe Bay has been extensively altered over the past 100 years with seawalls, channels, dredging, small inlets, piers, jetties, and boat harbors.

Recreational beach resources in the Bay are poor to non-existent. The area is better suited towards boating activities, fishing and crabbing.

#### Land Use and Zoning

In the past 200 years, the Kaneohe Bay area has undergone dramatic changes and continues to change as urbanization progresses. The area was used for the cultivation of taro, followed by rice and pineapple, and ended with grazing for pasture purposes. The use of irrigation ditches and water diversions to central Oahu reduced stream flows and have contributed to the deforestation, erosion and siltation in the Bay.

From 1928 to 1945, 280 acres of the Bay was filled to expand Mokapu Peninsula and from 1939 to 1945, approximately 15 million cubic yards of reef material was dredged from the Bay to construct the Kaneohe Naval Air Station and for housing development. These activities were the primary contributor to its degradation.

From 1940 to 1988, the Kaneohe area changed from a rural to residential community. In 1940, the population was 5,387 and by 1988 it had increased to 54,903 requiring more houses, streets and sewers, creating more paved areas and less vegetated areas. The population of windward Oahu was estimated to be the largest during this time.

In addition to the dredging of channels, private inlets for moorings to provide small boat access to shoreline house lots have contributed to the changes in the original coastline. Portions of the shoreline are bordered by sea walls built to control erosion and provide moorings for small boats.

The State land use designation for the islands within Kaneohe Bay, the fishponds, and all submerged land is Conservation with both Protective and Resource subzone designations.

Within the watershed, the Conservation lands are generally along the slopes and crest of the Koolau Mountains including some mauka valleys, and on the upper slopes of the other ridges. The northern portion which includes Waiahole, Waikane, Hakipuu, and

Kualoa are in the agricultural district, and the remaining lands are designated Urban.

Federal, State, and local jurisdictions overlap in the land use regulations affecting coastal areas. The lack of adequate resources had made the implementation and enforcement of the State's established regulations and controls difficult. This is just one reason why the problem has persisted for so long.

#### Water Quality

Construction in the shoreline area is responsible for increased runoff and sedimentation particularly on the southeastern portion of the Bay. During heavy storms, large deposits of sediment and freshwater have negatively affected coral reef growth where fine sediment is kept in suspension, reducing the clarity of the waters. Much of the material that was removed from the patches and fringing reefs were used to fill in old fishponds along the shoreline or were dumped back into the deeper parts of the Bay. The cumulative impacts have resulted in a highly modified extant marine community leaving little of the original reef structures and shoreline as it was before 1920.

Until 1977-1978, sewage was discharged into the bay from the Kaneohe sewage treatment plant and continues to occur periodically through the outfalls as "bypasses" and as seepage from the aging sewer collection system in urban Kaneohe.

In addition, many streams in the southern portion of the watershed were lined with concrete channels to protect houses built on natural flood plains from periodic flooding causing a reduction of ground water recharge and increase in sediment and freshwater storm runoff flowing into the Bay.

The health of the Kaneohe Bay ecosystem depends chiefly on the water quality in the streams, estuaries, and the Bay. Urbanization of the watershed is the most significant factor affecting water quality. The Bay and its watersheds have served as a living laboratory to analyze the influence of land use on tropical marine resources. However the carrying capacity of the ecosystem for further urban development based on responses to



specific parameters is unknown. Changes in reef community structure indicate the ecosystem may be approaching its adaptive limits. Conservative land use decisions controlling future urbanization may be needed.

### Geographical Features

Based on physical characteristics and human activity, the Bay has three distinctive northern to southern geographic sections. In the southern section, commercial, residential, and industrial development and associated activities are far greater than in the north.

In the central section, because of easy access from Heeia Kea Harbor there is a significant amount of recreational activity and use of the central barrier reef flat and sand flat. The only major public boat ramp and harbor, Heeia Kea Harbor is the point of origin of most of the commercial and recreational fishing activities.

The most oceanic section of the Bay is the northeastern portion where there is a large influx of ocean water over deeper parts of the barrier reef and the Mokoli'i Channel. It is also the most rural both on land and water with people pursuing quieter activities such as fishing.

### Marine Environment

Over the last 40 to 60 years, most of the shoreline and marine habitats have been heavily modified. The greatest changes resulted from the extensive dredging beginning in the late 1930's continuing through 1949. A lot of the material that was removed from the patch and fringing reefs were used to fill old fishponds along the shoreline or were dumped back into deeper parts of the Bay. In addition to the dredging and filling, much of the shoreline has been modified with the building of retaining walls, piers, and jetties.

Besides the structural modifications that degraded the marine habitat, urban growth has adversely impacted the marine community. Secondarily treated sewage was released into the southeast sector of the Bay from 1963 through 1978. This nutrient loading caused an increase in certain components of the

marine fauna at the expense of others. The substratum characteristics of much of Kaneohe Bay combined with elevated nutrient loading and freshwater influences have favored the development of larger particulate-feeding animal species, such as sponges, tunicates, and barnacles.

In the past, the Bay had one of the largest estuaries on Oahu and has significant value as a marine and freshwater fish nursery area. At one time, there was a diverse population of reef fish in the Bay, including kumu, maomao, and hinalea. Open water fish such as akule, opelu, oio, mullet, nehu, weke, papio and omaka find their way into the southern portion of the Bay. In deeper waters, commercial fishing boats occasionally work the area to catch fish bait, or nehu.

The organisms found in the shallow southeastern reef areas are all species common to that portion of the Bay. None of these organisms are considered rare or endangered. Many of the shoreline species are forms that are tolerant of lowered salinities and are able to thrive in habitats of low environmental quality with minimal disruption.

#### Historic, Archaeological and Cultural Resources

Kaneohe Bay's significant historical and cultural features are its fishponds. In the Hawaiian cultural tradition, fishponds were primarily rock walls and used to cultivate fish. In the 19<sup>th</sup> century, there were 30 fishponds identified in Kaneohe Bay. From 1946 to 1948, 9 fishponds were filled to create land for housing development. Today, only five fishponds are considered intact. Four of the ponds are Kahuluu Fishpond, Heeia Fishpond, Molii Fishpond, and Kanohuluiwi Fishpond.

Most of the other historic, archaeological, and cultural areas of concern are found in the vicinity of coastal ponds and marshes. Nuupia Ponds, adjacent to the Kailua Regional WWTP, is an important wildlife habitat for the Hawaiian Stilt.

#### **Proposed Action:**

The Department of Land and Natural Resources wishes to resolve the unauthorized pier problem in Kaneohe Bay, which has persisted for several decades. There are approximately 200

piers in the Bay, many of which do not have proper government authorization. To induce participation in the program from owners of these unauthorized piers, an "Amnesty Program" was created which essentially pardons individuals who possess an unauthorized pier, should they cooperate with the State to legalize the pier. [Note: This program does not include encroachments other than unauthorized piers, such as seawalls, fill, boats ramps, steps, etc. The State will continue to deal with these encroachments on a case-by-case basis.]

The ultimate goal of this program is to provide owners of unauthorized piers with the required permits to achieve compliance with the State's land use laws and ultimately resolve the illegal pier problem in Kaneohe Bay.

The following process for implementing the Amnesty Program was developed to meet its objectives to resolve the illegal pier problem in the greater portion of Kaneohe Bay, to establish equity in the use of public lands and to generate revenues for the State:

1. An inventory verifying the pier's existence, current owners and addresses of the adjoining property, the date of its construction, permits currently held and/or authorization from other agencies, and interest in participating in the Amnesty Program.
2. Ground proofing of the inventory by surveying each pier to provide documentation for the case files. The surveys consisted of measuring each pier and recording its length, width, and height above water, with rough sketches made to illustrate its shape, and photographs taken. Materials used for its construction and other existing structures were also noted. These files are available for review at the Land Division Office, Department of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii.
3. Preparation of a Master Conservation District Use Permit application pursuant to Chapter 183C, Hawaii Revised Statutes, and Title 13, Chapter 5, Hawaii Administrative Rules, and an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawaii Administrative Rules. A public hearing was held

before a Hearing Officer appointed by the Board of Land and Natural Resources on February 27, 2001.

4. Detailed survey data submitted by pier owners will be used by the State's Appraiser to establish the fair value of the lease payments for the use of submerged lands.
5. Approval of the Master CDUA and the request for issuance of leases pursuant to Chapter 171, Hawaii Revised Statutes.

#### Alternatives Considered

The alternatives considered to the proposed action were the "No Action" alternative and the "Removal" alternative.

The "No Action" alternative would be to do nothing, leaving the 200 structures unauthorized and illegal. However, this alternative is contrary to the intent of the Board in its approval of the action plan for the project.

The other alternative would be to remove the existing piers, an action likely to cause a greater disturbance to the ecological system (Studies have shown that piers provide a small contribution to habitat value by enhancing the fish population through the deliberate placement of hard substrate).

The preferred alternative, therefore, is to work with existing pier owners to bring them into conformance with State land use laws, resulting in the legalization of piers in Kaneohe Bay.

#### **Summary of Comments:**

Staff has summarized substantive agency responses as follows:

#### DEPARTMENT OF LAND & NATURAL RESOURCES

Division of Aquatic Resources: Notes that it would like to have any applications for CDUA amendments for maintenance or additional construction of piers be referred to the DAR for review to protect the recreational values of surrounding waters and nearby baitfish utilized by the State's commercial fishing industry.

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OFFICE OF HAWAIIAN AFFAIRS

The office notes that the project is located on "ceded" lands subject to the Public Land Trust, and fully expects that OHA will receive the pro rata share of the revenues, generated from the rents from pier users, to which it is entitled.

DEPARTMENT OF THE ARMY

U.S. Army Engineer District, Honolulu: Notes that landowners seeking authorization to: (a.) repair, modify, or remove existing piers; or (b.) install a new pier; are required to obtain a determination of Department of the Army requirements for their planned activity.

CITY & COUNTY OF HONOLULU

Department of Planning & Permitting: Notes that pier owners should be notified that any portion of the piers located mauka of the certified shoreline may be within City jurisdiction, and if so, are subject to City permits and approvals not covered under the Conservation District Use Permit.

PUBLIC HEARING SUMMARY

A public hearing was held at 6:00 P.M., on February 27, 2001, at the Kaneohe Community & Senior Center Auditorium. The meeting was attended by approximately sixty (60) people, with nineteen (19) of them signing-up to speak. Among those in attendance was State Representative Ken Ito.

A presentation, outlining the proposed project, was made by staff and was followed by a question and answer session. The presentation included: the methodology for determining lease-rent; the categories of piers legal, illegal, non-conforming, etc. and the fact that legal piers could remain legal, but pier-owners should check with their insurance companies; the recognition that the cost factor was of major concern to pier-owners; and the suggestion that use of a common surveyor might help to keep the cost down.

Concerns expressed by those in attendance included: people have been told that anyone who stops paying their revocable permit

monthly fee, while waiting for the amnesty process to be completed, can't get a lease for five years; is a DOT permit pier private or public; there was no public hearing on the methodology; we shouldn't be charged the same as commercial pier owners, we don't have write-offs; why should people on inlets pay; it's not fair to people that don't have piers; what's the time-frame; when will the State remove illegal piers; who is eligible, someone besides the land owner; people on the mud-flats who need longer piers, shouldn't pay the same rate as those on channels, or can the State help us get a channel; don't know if my pier is conforming, non-conforming, or legal; we need standards and definitions; we own submerged land, what's reclaimed land value; are there penalties attached; I have a seawall; what about others, besides Kaneohe; need comprehensive notification; need to coordinate with the City Department of Planning and Permitting, because we can't have concrete in the 40-foot setback; we were told to stop paying by your office, are we in violation; will the EA and CDUA be available to the public, part of the public record; according to 171-17, need an appraisal, or are you using County tax records; and what about floating and cantilevered piers?

Many of the questions were answered directly and some people were asked to speak with staff after the meeting on questions specific to their situation. The question about floating and cantilevered piers was answered inaccurately, but a letter was subsequently sent to all known pier owners explaining that these too would need to be included, and that leases would be available for them. Staff feels that with the issuance of this submittal all of the questions, so far expressed, have been answered.

**Analysis:**

Following review and acceptance for processing, the applicant, by letter dated February 7, 2001 was notified that:

1. The proposed use is an identified land use (R-6, Marine Construction, D-1) within the Resource subzone of the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR);

2. Pursuant to Section 13-5-40 (3), HAR, a public hearing was held on February 27, 2001;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) was issued. The Final Environmental Assessment was published in the Office of Environmental Quality Control (OEQC)'s Environmental Notice's May 8, 2001 issue; and
4. In regard to Hawaii's Coastal Zone Management law (Chapter 205A, HRS), which pertains to the Special Management Area (SMA) requirements administered by the various counties, the project is outside the SMA.

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. The proposed land use is consistent with the purpose of the Conservation District.

The purpose of the Conservation District is to regulate land uses for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The Department of Land and Natural Resources wishes to resolve the unauthorized pier problem in Kaneohe Bay, which has persisted for several decades. There are approximately 200 piers in the Bay, many of which do not have proper government authorization. To induce participation in the program from owners of these unauthorized piers, an "Amnesty Program" was created which essentially pardons individuals who possess an unauthorized pier. [Note: This program does not include encroachments other than unauthorized piers, such as seawalls, fill, boats ramps, steps, etc. The State will continue to deal with these encroachments on a case-by-case basis.]

The ultimate goal of this program is to provide owners of unauthorized piers with the required permits to achieve

compliance with the State's land use laws and ultimately resolve the illegal pier problem in Kaneohe Bay.

The Department believes that this action is consistent with the purpose of the Conservation District to protect and conserve resources.

Implementation of this program will ultimately result in rents generated from pier uses being used for beach improvements.

In terms of natural resource preservation, it should be noted that, the immediate shoreline area in the vicinity of the piers in Kaneohe Bay is generally composed of mudflats, with some thin terrigenous-based beach areas, generally inaccessible by foot to the general public. Water quality is often impaired due to turbidity from sediments. Because of the generally flat broad terrain, the shoreline areas are either completely submerged at high tide, or dry.

The shoreline of Kaneohe Bay has been extensively altered over the past 100 years with seawalls, channels, dredging, small inlets, piers, jetties, and boat harbors.

Recreational beach resources in the Bay are poor to non-existent. The area is better suited towards boating activities, fishing and crabbing. Pier development in this area is a wise use of the natural environment given the environmental and social fabric of the region.

2. The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.

The objective of the resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area.

Staff believes that this action is consistent with the purpose of the Resource subzone inasmuch as it seeks to use, but also conserve the State's natural resources. Pier use will result in funds being generated in beach improvements. As noted in the preceding discussion, the areas in which the piers exist have already been significantly altered and pier use does not appear



to be inconsistent with the existing environmental and social character of the region.

3. The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.

Chapter 205A, HRS encompasses most land, water and marine areas of the State. Section 205A-2(a)(5)(a) states that it is a policy of CZM, to provide public or private facilities and improvements important to the State's economy in suitable locations. The Department believes that Kaneohe Bay is a suitable location for either public or private piers. Pier development in Kaneohe Bay does not affect beach processes or significantly affect public access.

Finally, the Department finds that the proposed project is not inconsistent with the recommendations of the State Coastal Erosion Management Plan (COEMAP), since coastal erosion and beach issues are of lesser importance in the Bay.

4. The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.

The Kaneohe Bay Pier project does not involve the use of additional natural resources or State Lands. The purpose of the project is to provide owners of unauthorized piers with the required permits to achieve compliance with the State's land use laws and ultimately resolve the illegal pier problem in Kaneohe Bay. Therefore, any impacts resulting from the legalization of piers in Kaneohe Bay would have already occurred. This being said, the presence of existing piers creates some level of environmental impact and change to natural resources. In addition, future maintenance of boat piers could result in minor impacts to the environment, which should be disclosed, evaluated and mitigated.

#### Existing Piers

There are approximately 200 piers in Kaneohe Bay. Some of these piers were authorized and constructed under a Conservation District Use Application, but the majority were not.

The Department conducted site visits to verify the presence of piers as well as the type and size of the piers. This information is contained in files within the DLNR, Land Division.

Piers in Kaneohe Bay are constructed of different materials and come in a variety of shapes and sizes. Generally, wooden pier platforms are constructed on top of either wood or concrete pilings. Pier sizes vary, from small docks, abutting a seawall, to long shore perpendicular piers. Floating piers are also present in the Bay. In addition, some docks are made of fiberglass.

These piers impact the environment because they: 1) occupy public space (shore area), 2) introduce a visual element to the shore area, and 3) impact marine substrate and biota. [Note: Any impacts to marine substrate and marine biota would have likely occurred when the pier was constructed. These impacts are difficult or impossible to assess today.]

In terms of the impact to public space, the DLNR is of the opinion that such impacts are not significant since the shore area of Kaneohe Bay is not actively sought-out for beach recreation. Most of the recreational activity centers around the central barrier reef flat that extends across the mouth of the Bay and includes the channels at the southern and northern ends, the sand flat and Kapapa Island. The shallow portion of the barrier reef is approximately 3 miles long by 1.2 miles wide.

The immediate shoreline area in the vicinity of the piers in Kaneohe Bay is generally composed of mudflats, with some thin terrigenous-based beach areas, generally inaccessible by foot to the general public. Water quality is often impaired due to turbidity from sediments. Because of the generally flat broad terrain, the shoreline areas are either completely submerged at high tide, or dry.

Recreational beach resources in the Bay are poor to non-existent. The area is better suited towards boating activities, fishing and crabbing. The existing piers are not expected to impact fishing and crabbing activities.

Visual impacts are difficult to analyze due to the different ways people view the natural and built environments. A pier may be aesthetically appealing to some viewers and unappealing to others. The effect of building a pier on a pristine shoreline would certainly be negative. However, The shoreline of Kaneohe Bay has been extensively altered over the past 100 years with seawalls, channels, dredging, small inlets, piers, jetties, and boat harbors. Piers have become an integral feature along the Kaneohe Bay shoreline and their effect on the visual quality of the area is not presently a concern.

#### Pier Maintenance

If a Conservation District Use Application and land dispositions are finally issued to pier owners, it is anticipated that some pier maintenance work would be conducted. Impacts resulting from pier maintenance could involve increases in turbidity and disturbance of bottom sediments, if pier foundations are removed and replaced. In addition, impacts to the marine environment could occur from improper construction methods, resulting in the discharge of toxic substances and debris into the water.

For pier repairs, the following mitigation measures should be followed:

1. Fabrication and assembly of new decks should take place, as much as possible, on fast land.
2. Wooden and other parts treated with preservative, paint, varnish, antifoulant, or other protective coatings, or fabricated from volatile materials such as fiberglass resin, should be cured or dried for at least one week before they are placed in contact with the water.
3. Pier owners must prevent liquid and solid wastes, debris and rubbish from washing, blowing or blowing into the water.
4. Any filling of submerged land is prohibited expressly without separate approval.

5. Pier foundation replacement should be coordinated with the appropriate State and Federal agencies to ensure that impacts to marine substrate, coral, or other marine organisms is avoided or minimized.
5. The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.

Piers in Kaneohe Bay appear to be a compatible use of the region and are an appropriate use of submerged land given the physical conditions and historic uses of the area.

6. The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.

The Kaneohe Bay Pier project does not involve the use of additional natural resources or State Lands. The purpose of the project is to provide owners of unauthorized piers with the required permits to achieve compliance with the State's land use laws and ultimately resolve the illegal pier problem in Kaneohe Bay. Therefore, any impacts resulting from the legalization of piers in Kaneohe Bay would have already occurred. This being said, the presence of existing piers does create some level of environmental impact and change to natural resources. In addition, future maintenance of boat piers could result in minor impacts to the environment, which should be disclosed, evaluated and mitigated. However, the existing natural beauty and open space characteristics of the Bay will not be further degraded as a result of this action.

7. Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.

The proposed project does not involve the subdivision of land in the conservation district.

8. The proposed land use will not be materially detrimental to the public health, safety and welfare.

The Department has determined that the project will not be significantly detrimental to the public health, safety and welfare of the general public, and will, in fact, improve public health safety and welfare by resolving a long-standing land use problem.

#### DESIGNATION OF REVENUE

This program could also have positive environmental impacts. First, pier owners would be able to legally repair existing dilapidated structures in the Bay. Secondly, in 1999 the Governor signed into effect Act 84 to help facilitate the Restoration of Beach Lands. The "Beach Act" permits the Department of Land and Natural Resources to do "all things necessary, useful, and convenient in connection with restoration of beach lands." The act also established a Beach Restoration Special Fund. Under Section 171-154, HRS, Authority to lease coastal lands, "The Board, subject to this chapter, may lease public coastal lands under the Board's jurisdiction for the purpose of generating revenues to be deposited into the beach [restoration] special fund." The Beach Act also allows the Board to designate suitable coastal lands for the purpose of generating such revenues. Therefore, staff will request, in addition to approval of this Master Conservation District Use Application, that the Board designate pier leases in Kaneohe Bay as a revenue source for the Beach Restoration Special Fund.

Using revenues generated from pier leases in Kaneohe Bay would augment the State's efforts to restore Waikiki and other eroded beaches, the restoration of which benefits the public directly—by enhancing recreational resources—and particularly with Waikiki, indirectly—by inducing significant economic activity on Oahu and throughout the State. Staff believes that using the pier lease revenues for beach restoration is appropriate. This will provide a good working example of appropriate coastal development in Kaneohe Bay, which will aid in the enhancement of beaches to the benefit of the general public.

#### **Discussion:**

Staff believes the planned Kaneohe Bay pier amnesty program to provide owners of unauthorized piers with the required permits

to achieve compliance with the State's land use laws and ultimately resolve the illegal pier problem is long overdue.

Staff feels the significant impacts of this program will be overwhelmingly beneficial, and that relative to the benefits that will occur, any adverse impacts will not be significant.

Staff, therefore, recommends as follows:

**Recommendation:**

- A. That the Board of Land and Natural Resources dedicate revenues generated from the leasing of piers and granting of easements for seawalls, filled areas, boat ramps, steps, etc., as a revenue source for the Beach Restoration Special Fund; and
- B. That the Board of Land and Natural Resources APPROVE the Kaneohe Bay Pier Project, subject to the following conditions:
  - 1. The pier owners shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
  - 2. The pier owners, their successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, their successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
  - 3. The pier owners shall comply with all applicable Department of Health administrative rules;
  - 4. Before proceeding with any repair work authorized by this approval, the pier owner shall submit four copies of the construction plans to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in

the permit application. Three copies will be returned to the pier owner. Plan approval by the Chairperson does not constitute approval required from other agencies;

5. All mitigation measures set forth in the master application materials and in the Final Environmental Assessment for this project are hereby incorporated as conditions of the permit;
6. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the pier owner shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
7. The pier owners understand and agree that this permit does not convey any vested rights or exclusive privilege;
8. Pier owners with unauthorized piers, who have not yet made application for inclusion in the amnesty program and who wish to participate in same, shall make formal application to the Department's Land Division within 90 days of the approval of this application; failing to do so within the 90 days will result in the Department removing the pier at the pier owners' expense;
9. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during repair or operations, all work shall cease in the vicinity and the pier owner shall immediately contact the State Historic Preservation Division;
10. Pier owners who require a lease from the State shall obtain a land disposition form from the Oahu District Land Agent for the use of State land; and
11. Other terms and conditions as may be prescribed by the Chairperson; and

Respectfully submitted,

/s/  
Traver Carroll  
Staff Planner

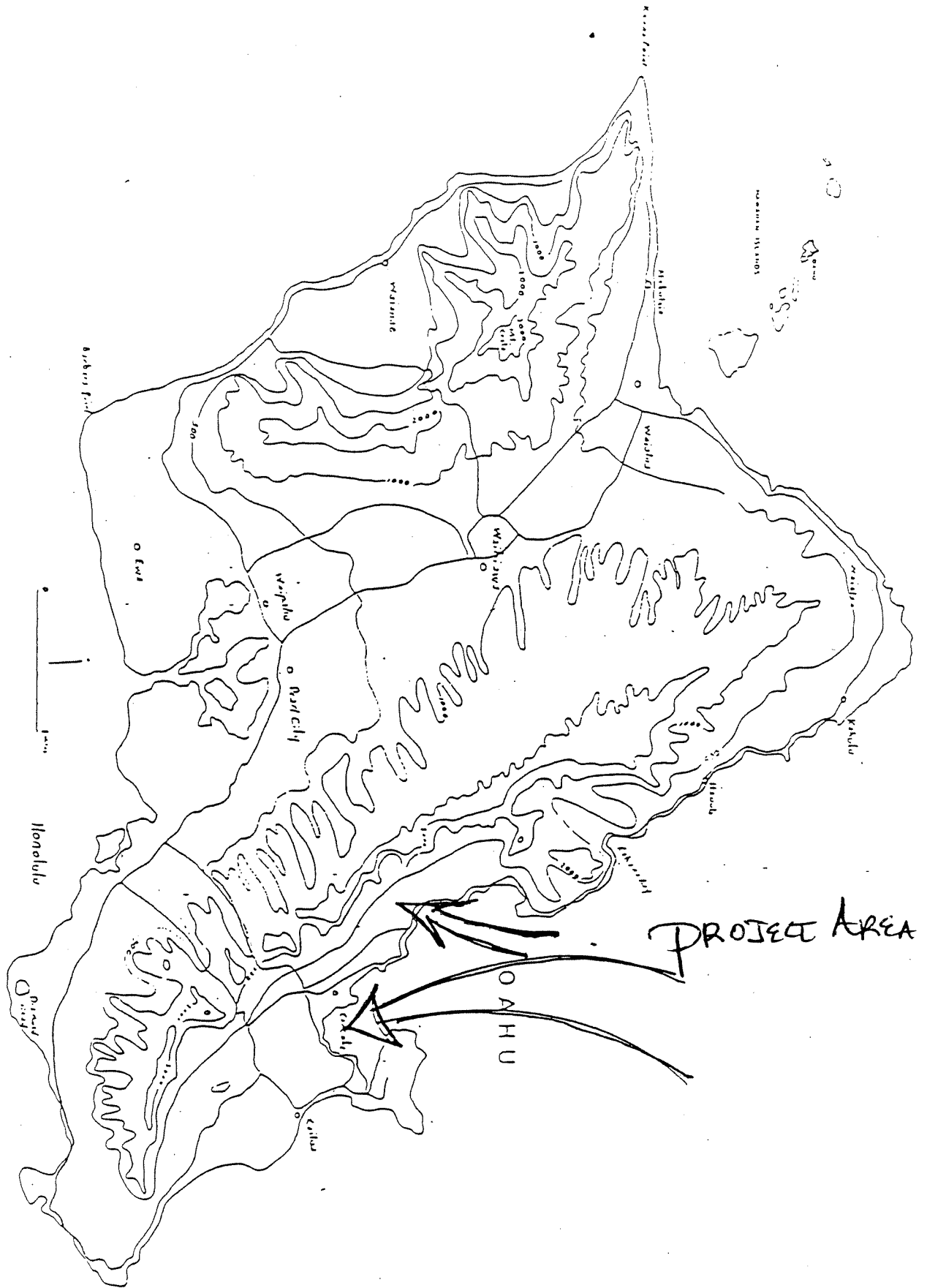
BOARD OF LAND AND  
NATURAL RESOURCES

CDUA OA-3017B  
Kaneohe Bay Piers Project

Approved for submittal:

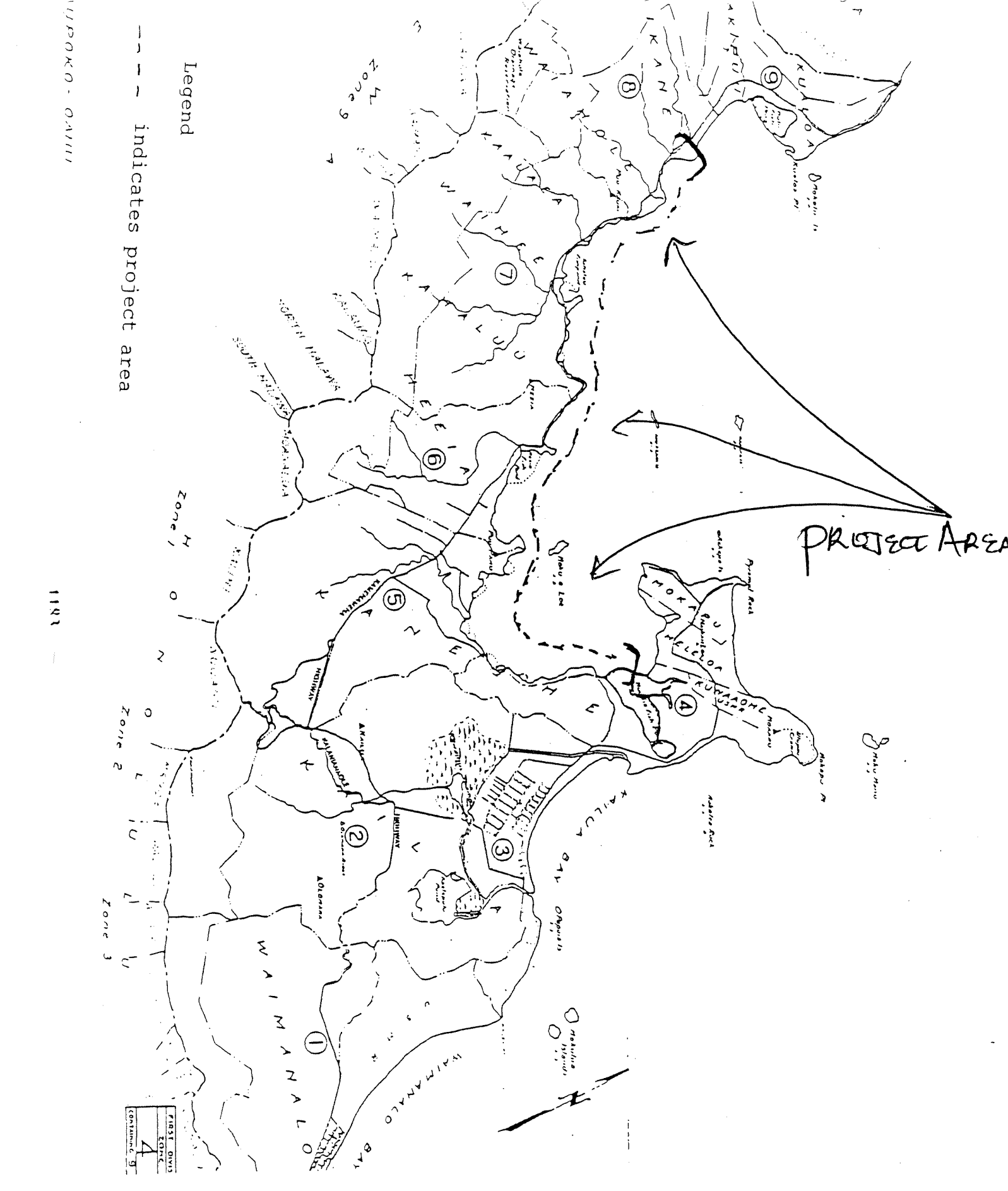
/s/  
Gilbert S. Coloma-Agaran, Chairperson  
Board of Land and Natural Resources





Kaneohe Bay Pier Project

Exhibit 1



Kaneohe Bay Pier Project

Exhibit 2



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

Monday, January 22, 2001

<<ContactFirstName>> <<ContactLastName>>  
<<ContractStreetAddress>>  
<<ContactCityState>> <<ContactZipCode>>

Dear Landowner,

Subject: Private Residential Noncommercial Pier on State Submerged Land at  
<<PropertyStreetAddress>>, TMK <<TMK>>

As you may know, the Board of Land and Natural Resources (Land Board), in carrying out its responsibilities in the regulation of the Conservation District and in the management of public lands, has initiated an "Amnesty Program" to bring piers into conformance with State laws. We would like to update you on the current status and to ask for your response on your intentions regarding this program.

Act 261, SLH 2000, which was enacted into law this past year: 1) allows the Land Board to lease by direct negotiation submerged lands for private, residential non-commercial piers, 2) deletes the requirement for posting of signs on piers to allow for public use of the pier and 3) eliminates the requirement to obtain prior approval of the Governor and the Legislature for leasing of noncommercial piers. All three amendments will sunset on June 30, 2005.

The Department has drafted an environmental assessment (EA) which will be published in the OEQC Bulletin on January 23, 2001. This EA is required pursuant to Chapters 343 and 183C, HRS. You have the opportunity to comment on this EA during the 30-day comment period ending February 22, 2001. Copies will be available for viewing at the public libraries in the Kaneohe area, at the Land Division (1151 Punchbowl Street, Room 220) and at the Office of Environmental Quality Control (235 S. Beretania Street, State Office Tower, Room 702

The Department has filed a master Conservation District Use Application (CDUA) which is required pursuant to Chapter 183C, HRS, for the use of lands in the Conservation District. We intend to request Board approval of this master CDUA in April.

Once the master CDUA is approved, a land disposition (lease document) pursuant to Chapter 171, HRS, can be issued. For the land disposition:

The Department has filed a master Conservation District Use Application (CDUA) which is required pursuant to Chapter 183C, HRS, for the use of lands in the Conservation District. We intend to request Board approval of this master CDUA in April.

Once the master CDUA is approved, a land disposition (lease document) pursuant to Chapter 171, HRS, can be issued. For the land disposition:

- 1) The fair market rent (one-time payment) shall be determined by a formula (dollar amount per square foot) that will be presented to the Land Board at a date to be determined. We will notify you of this meeting through our website (<http://www.state.hi.us/dlnr/lmd>), area legislators and Protect Our Shoreline Ohana. You are invited to provide any comments you may have at that meeting.
- 2) You will need to (**please await further instructions before proceeding with any of the following**):
  - Hire and pay a licensed surveyor to prepare a map and description (in CAD)
  - Pay for document fees (\$30 per document) and rent (to be determined according to the approved formula)
  - Provide tax clearances from the State and county tax offices
- 3) The standard State lease terms and conditions require:
  - Liability insurance
  - Performance bond
- 4) The lease term recommended for Land Board approval will be 55 years.

What are the benefits of joining the Amnesty Program?

- Opportunity to legalize your pier without having to pay consultants for the preparation of an EA and CDUA, an estimated cost of \$30,000 to \$50,000.
- Waiver of back rent or fines for those who participate in the program.
- Legalization of pier enables smooth sale of property in the future.
- Five-year window of Act 261 legislation allows for direct, long-term disposition and eliminates public use requirement, both advantageous when trying to sell your property or obtain homeowners insurance for your pier.

At any time during this process, if it is found that you have non-pier encroachments or other violations, such violations will be handled separately from and prior to processing of the pier. You will

be asked to complete a questionnaire which will allow us to determine whether the encroachments should be removed or legalized under an easement document.

Your options are as follows:

- 1) Join the Amnesty Program
- 2) Have the pier and any encroachments removed
- 3) For those people with DOT Permits, you have the choice of continuing with the permit without obtaining a long-term lease. You should be aware, however, that the public use requirement would still apply to your pier and may negatively impact your ability to obtain insurance.

Taking all of this into consideration, we ask that you think over your options and then complete the attached application form. Please make sure you follow the instructions carefully, as the information may be used in the legal documents to be issued. Also, please note that your positive response to participate in the Amnesty Program does not legally commit you to participating. You may decide against obtaining a land disposition for your pier up to the point where we request your signature on the legal documents. (Please note that, in this case, we would retain the \$30 document fees since the documents had been prepared.)

**If you decide not to participate in the Amnesty Program, your illegal pier will be processed through the normal Departmental penalty system and will be subject to fines and/or removal of the pier.**

Please return this application form by Thursday, February 22, 2001 to enable processing. If you have any information to provide or questions to ask, please contact Traver Carroll at 587-0439.

Thank you.

Sincerely,

/s/

for Dean Y. Uchida, Administrator

**STATE OF HAWAII  
DEPARTMENT OF LAND & NATURAL RESOURCES**

**KANEOHE BAY PIER PROJECT  
APPLICATION FORM**

For DLNR use only:  
K-Bay Case No.  
Date of request:  
Date entered:

**INSTRUCTIONS:**

This application must be completed by the property owner(s) of the land abutting the pier or the property owner's authorized representative. If there is more than one owner, then all such owners must be included on this application.

**I. LOCATION**

Tax map key (of property abutting the pier): \_\_\_\_\_

Abutting Property address: \_\_\_\_\_

No. and Street

City

State

Zip Code

**II. AMNESTY PROGRAM**

Would you like to participate in the DLNR's Amnesty Program as described in our letter attached?

Yes: \_\_\_\_\_ No (explain): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**III. APPLICANT INFORMATION**

Should a lease result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable, full legal names and mailing addresses, one for each person/entity (attach additional sheets as necessary). If title is held by a trust, please include the trustee(s) name(s) and full description of the trust (e.g., Jonathan D. Smith, as Trustee of the Jonathan D. Smith Revocable Living Trust dated January 1, 2001).

1 - Applicant name: \_\_\_\_\_

1 - Mailing address: \_\_\_\_\_

No. and Street

City

State

Zip Code

1 - Phone numbers: \_\_\_\_\_  
Work Home

1 - Applicant intends to hold title as:  
☐ Individual ☐ Corporation ☐ Partnership  
☐ Husband and Wife ☐ Limited Liability Corp. ☐ Limited Partnership  
☐ Trust ☐ Non-Profit Corporation  
☐ Association ☐ Joint Venture  
☐ Limited Liability Partnership ☐ Other (specify): \_\_\_\_\_

1- For individual or husband and wife, type of tenancy:  
☐ Tenant in Severalty ☐ Tenants in Common ☐ Joint Tenants  
☐ Tenants by the Entirety

1 - For individual, marital status:  
☐ Single ☐ Widow/widower ☐ Married – spouse of: \_\_\_\_\_

1 - For partnership or corporation, State of incorporation: \_\_\_\_\_

2 - Applicant name: \_\_\_\_\_

2 - Mailing address: \_\_\_\_\_  
No. and Street

\_\_\_\_\_  
City State Zip Code

2 - Phone numbers: \_\_\_\_\_  
Work Home

2 - Applicant intends to hold title as:  
☐ Individual ☐ Corporation ☐ Partnership  
☐ Husband and Wife ☐ Limited Liability Corporation ☐ Limited Partnership  
☐ Trust ☐ Non-Profit Corporation  
☐ Association ☐ Joint Venture  
☐ Limited Liability Partnership ☐ Other (specify): \_\_\_\_\_

2- For individual or husband and wife, type of tenancy:  
☐ Tenant in Severalty ☐ Tenants in Common ☐ Joint Tenants  
☐ Tenants by the Entirety

2 - For individual, marital status:  
☐ Single ☐ Widow/widower ☐ Married – spouse of: \_\_\_\_\_

2 - For partnership or corporation, State of incorporation: \_\_\_\_\_

IV. AGENT

If you have an attorney, consultant or other representative processing this request for you, please include the following information.

Agent name: \_\_\_\_\_  
Last name First Name

Agent address: \_\_\_\_\_  
No. and Street

\_\_\_\_\_  
City State Zip Code

Phone numbers: \_\_\_\_\_  
Work Home Cellular

V. CERTIFICATION

I hereby certify that I am the legal owner of the above referenced property or that I am an authorized representative of the legal owner.

\_\_\_\_\_  
Printed Name

X \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

X \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

X \_\_\_\_\_  
Signature

Dated: \_\_\_\_\_